

1 your Honor. So we, we --

2 JUDGE SIPPEL: Excuse me.

3 MS. SINGH: When I described to you
4 the general posture of the proceeding, I had
5 gotten up to the point that we had conducted
6 discovery and depositions and, you know, you
7 should know as the Bureau has represented in
8 filings, before you, your Honor, in this case
9 that the parties had been informally
10 discussing settlement starting in mid-2008.

11 We decided to conclude those
12 settlement negotiations unsuccessfully due to
13 the Bureau's rejection of the offer that the
14 other parties proffered to it. After
15 depositions were concluded, the parties and
16 the Bureau resumed formal settlement
17 negotiations, at which time we requested, your
18 Honor, jointly to suspend the hearing schedule
19 in this proceeding, and we conducted several
20 months of settlement negotiations.

21 JUDGE SIPPEL: That was in March, I
22 believe, that you started.

1 MS. SINGH: Yes, that's correct,
2 your Honor.

3 JUDGE SIPPEL: Okay. Starting in
4 March, all right. Now, so then I'm enough up-
5 to speed on what has transpired since then
6 where we are now. At least -- let me, let me
7 just ask this question. We have everybody --
8 we don't have Mr. Bishop. Is Mr. -- but Mr.
9 Bishop was covered in that settlement, wasn't
10 he?

11 MS. SINGH: He is covered in the
12 settlement, your Honor. He is pro se and he
13 lives in California and thus far he has not
14 appeared before the Commission in any
15 proceedings, but as I mentioned, due to his
16 personal relationship with Mr. Austin as well
17 as the filed pleadings being served on him, he
18 has participated in writing if not in person.

19 JUDGE SIPPEL: But he is covered by
20 the settlement. In other words, he --

21 MS. SINGH: Yes.

22 JUDGE SIPPEL: -- he's dismissed as

1 a party and there's been no adverse findings
2 against him.

3 MS. SINGH: He has been covered by
4 the settlement. He is a party to the
5 proceeding because the settlement approval has
6 been stayed. And he has agreed to any
7 commitments in the settlement that were made
8 as to him.

9 JUDGE SIPPEL: All right. But
10 there's no findings of, as to him in terms of
11 -- his character qualifications have not been
12 adjudicated. Is that correct?

13 MS. SINGH: That is correct, your
14 Honor.

15 JUDGE SIPPEL: All right. Now, I
16 know there are certain conditions in the
17 settlement agreement, but I don't need to, I
18 don't need to go into those right now. But my
19 question is really this, why is it that, that
20 all of that was done with Mr. Austin, Mr.
21 Waugh, and Mr. Bishop -- I'm sorry, Mr.
22 Bishop, but Mr. Waugh was, was not included.

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1 MS. SINGH: Your Honor, if I may?

2 JUDGE SIPPEL: Yes, and then Mr.
3 Silva can explain from his side. This is the
4 thing that I'm mostly concerned about. As I
5 said in my order calling this pre-hearing
6 conference, which by the way the Bureau have
7 also requested a pre-hearing conference.

8 MS. SINGH: Yes, your Honor.

9 JUDGE SIPPEL: Is there some way
10 that we can, that this, this can be tied up,
11 this case can be tied up and dismissed on a
12 universal basis without the need for a
13 hearing? And one issue, side issue for that,
14 of course, is the pending partial motion for
15 summary decision, if it is pending.

16 Again, we got a jurisdictional
17 issue maybe because I in effect have granted
18 the dismissal of the case, the request for a
19 dismissal, but let me start again with where
20 I -- let me go back to where I started off.

21 MS. SINGH: Please, your Honor.

22 JUDGE SIPPEL: Mr. Silva was not

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1 included in this settlement -- I'm sorry, Mr.
2 Waugh was not included. Why?

3 MS. SINGH: Your Honor, I am sure
4- that Mr. Silva can add to anything that I
5 missed --

6 JUDGE SIPPEL: He will I'm sure.
7 Go ahead.

8 MS. SINGH: But just from the
9 Bureau's perspective, Mr. Waugh was invited to
10 participate and did participate in settlement
11 negotiations both in their informal posture
12 since mid-2008 and in their formal posture
13 commencing March 2009. He submitted various
14 position statements to the Bureau and the
15 other parties.

16 The other parties also conveyed
17 their positions to Mr. Waugh through his
18 counsel either through written position
19 statements or oral dialogue in face-to-face
20 meetings and telephone conferences or a
21 combination of these venues.

22 JUDGE SIPPEL: All right. I think

1 I -- I know you have furnished me copies of
2 those. You did a very detailed and
3 comprehensive report on the statement of
4 facts, which I had, which I had asked for, so
5 -- but, again, I'm not trying to get -- I
6 don't want to get into those now issues right
7 now. I want the broader issues.

8 MS. SINGH: Okay.

9 JUDGE SIPPEL: All right. So when
10 you sat down and negotiated the settlement, or
11 rather you concluded the settlement and
12 everything went out for signatures.

13 MS. SINGH: Yes.

14 JUDGE SIPPEL: Did you let Mr.
15 Silva know this or Mr. Waugh know this that,
16 you know, "We're putting this package together
17 now and, you know, we've given you the chance,
18 but you're not in it because you're not
19 cooperating with us," or something like that?
20 I mean in other words, was he given advanced
21 notice that this thing had come to a head and
22 that, you know, the day of reckoning was now?

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1 MS. SINGH: To the Bureau's
2 understanding, yes, your Honor. And I do
3 understand that that is an issue of dispute,
4 so I'm sure that Mr. Silva will comment on it
5 for you further.

6 JUDGE SIPPEL: Well, just exactly
7 how was it done from the Bureau's standpoint?

8 MS. SINGH: Well, during two
9 telephone conversations following Mr. Waugh's
10 last statement of position in this proceeding
11 and settlement negotiations --

12 JUDGE SIPPEL: What was the date of
13 that? Can you tell me the date --

14 MS. SINGH: Yes, your Honor.

15 JUDGE SIPPEL: -- the last position
16 statement was what date?

17 MS. SINGH: The last position
18 statement was July 8, 2009. I believe that it
19 was one of the attachments that Mr. Waugh
20 submitted in his settlement statement of facts
21 ordered by your Honor to file.

22 JUDGE SIPPEL: All right, I'm sure

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1 it was. I just want a point of reference.

2 MS. SINGH: Sure.

3 JUDGE SIPPEL: So it was 2009 that
4 things sort of, that came to a head. And what
5 was the -- what was communicated?

6 MS. SINGH: Well, we had scheduled
7 a conference call that we had postponed until
8 July 8 at Mr. Waugh's counsel's request. We
9 received from Mr. Waugh through his counsel a
10 position statement that outlined the terms
11 under which Mr. Waugh would propose to agree
12 to a universal settlement.

13 This position statement contained
14 various facets that the filings discuss for
15 you in great detail, your Honor, but suffice
16 to say that we told Mr. Waugh during the July
17 8, 2009 conference call --

18 JUDGE SIPPEL: July 8th there was a
19 conference call?

20 MS. SINGH: Yes, July 8, 2009.

21 JUDGE SIPPEL: I got you.

22 MS. SINGH: We told him as a

1 finality to many face-to-face meetings,
2 telephone calls, and emails and documents that
3 were exchanged by all the parties of which the
4 Bureau is aware, that consistent with those
5 conversations, the Bureau could not settle
6 under the terms that Mr. Waugh had outlined.

7 JUDGE SIPPEL: So that was the
8 advice that you gave him. I mean, he was
9 advised of the Bureau's final position at
10 that, on the 8th of July in that conference
11 call.

12 MS. SINGH: Yes, and we said that
13 given his position, we would see what if
14 further reaction we could offer him. On July
15 31, 2009, Bureau counsel placed a call first
16 to Preferred Communication Systems, Inc.
17 though the participants that are on the line
18 today, Mr. Austin and Mr. Guskey, and second
19 to Mr. Silva, who is counsel for Mr. Waugh.

20 JUDGE SIPPEL: Is that another
21 conference call?

22 MS. SINGH: Yes, two separate

1 conference calls, your Honor.

2 JUDGE SIPPEL: Okay.

3 MS. SINGH: And during those
4 separate conference calls, we advised each
5 party that given the August 11, 2009 deadline
6 that your Honor had provided for the next
7 status report --

8 JUDGE SIPPEL: Right.

9 MS. SINGH: -- as well as the
10 change in the Bureau chief that had been
11 recently announced at that time, --

12 JUDGE SIPPEL: Okay.

13 MS. SINGH: -- we anticipated that
14 we would be in a position to either settle
15 under the terms outlined by the Enforcement
16 Bureau --

17 JUDGE SIPPEL: Okay.

18 MS. SINGH: -- or to have to seek
19 further time if the Bureau chief had not made
20 a -- for a permanent and final decision before
21 leaving her post.

22 JUDGE SIPPEL: And what was the

1 status of, on the final position?

2 MS. SINGH: On the final position
3 that the Bureau chief decided, which is
4 reflected in the settlement documents filed
5 with your Honor, the Bureau chief and the
6 Enforcement Bureau and Preferred Communication
7 Systems, Inc., Preferred Acquisitions, Inc.,
8 and Charles M. Austin, collectively held the
9 position that Mr. Waugh was not entitled to
10 receive stock in Preferred Communication
11 Systems, Inc., Preferred Acquisitions, Inc.
12 through the vehicle of a settlement agreement
13 in this proceeding.

14 JUDGE SIPPEL: In other words, an
15 equity interest. It would be -- that was --
16 was that the -- was that from the Bureau's
17 standpoint now? Was that the sticking point
18 in negotiation?

19 MS. SINGH: Yes, your Honor.
20 Here's, here's what happened according to the
21 Bureau.

22 JUDGE SIPPEL: Well, that's okay.

1 I don't think we need to go into that just
2 yet, but that --

3 MS. SINGH: Okay.

4 JUDGE SIPPEL: -- basically was it.

5 MS. SINGH: Yes.

6 JUDGE SIPPEL: If he had, if he had
7 dropped the, an insistence upon stock, stock
8 interest, and I take it this is in the two
9 companies or Preferred --

10 MR. OSHINSKY: It was the parent
11 company.

12 MS. SINGH: Preferred Communication
13 Systems, Inc. is the parent company --

14 JUDGE SIPPEL: Got you, okay.

15 MS. SINGH: -- of Preferred
16 Acquisitions, Inc., your Honor.

17 JUDGE SIPPEL: All right. And
18 that's what he wanted. He wanted stock in the
19 parent company.

20 MS. SINGH: That's correct, but he
21 didn't --

22 JUDGE SIPPEL: And what, what

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1 percentage did he want?

2 MS. SINGH: He wanted a percentage
3 that is, that the Bureau is unaware of at this
4 point due to ongoing disputes between the
5 parties as to the amount of that stock, the
6 amount of shares.

7 JUDGE SIPPEL: Well, would it be
8 numerically? Would be -- it wouldn't be
9 numerically controlling? In other words, it
10 wouldn't be more than fifty percent?

11 MS. SINGH: Not to the Bureau's
12 knowledge, your Honor, but I'm sure that the
13 parties that are on the line and counsel for
14 Mr. Waugh can clarify that for you to the
15 extent that they can.

16 JUDGE SIPPEL: Okay. Can we get a
17 -- can I get a clarification on that?

18 MR. GUSKEY: Yes. This is Mr.
19 Guskey. As far as the percentage, there isn't
20 a simple answer to that. And one of the
21 reasons that the company has shareholders of
22 different classifications, within the

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1 classifications, there are conversion rights
2 from the "preferred stock to common stock."

3 So I'm prefacing that because I
4 don't want to give a number on record that
5 could somehow be incorrect, but as an
6 approximate percentage, you know, it could be
7 in the 35 to 40 percent range of what Mr.
8 Waugh was looking for.

9 JUDGE SIPPEL: Is that, is that, as
10 it has been stated there by Mr. Guskey, is
11 that basically what your position would be of
12 how you understand it?

13 MR. SILVA: Yes, it would not have
14 involved a transfer of control.

15 JUDGE SIPPEL: That's a pretty --
16 that's a pretty hefty percentage though,
17 right?

18 MR. SILVA: Right.

19 JUDGE SIPPEL: Over 30 percent is
20 pretty good.

21 MR. SILVA: And, and if I could
22 just clarify one point. It was a beneficial

1 stock interest. It wasn't -- it was always
2 Mr. Waugh's understanding from the very
3 beginning of the company that his interest
4 would be a non-attributable interest in the
5 form of being the, the beneficiary of this
6 voting trust so that he would have no control.
7 And that's what he is, continues to seek
8 today.

9 JUDGE SIPPEL: So it's -- okay,
10 strictly a beneficial. It would be like a
11 preferred shareholder.

12 MR. SILVA: Yes, no vote, no
13 control, strictly the beneficial owner of the
14 stock, that's correct. Well, --

15 MR. GUSKEY: This is Mr. --

16 JUDGE SIPPEL: Yes, I'm sorry, I
17 didn't mean to cut you off. Is that, is that
18 basically it?

19 MR. SILVA: That's it.

20 JUDGE SIPPEL: Mr. Guskey, is that
21 you again, sir?

22 MR. GUSKEY: Yes, this is Mr.

1 Guskey. With your permission, I'd like to add

2 --

3 JUDGE SIPPEL: Yes, go ahead.

4 MR. GUSKEY: -- to the framing to
5 the circumstances, and I'm sure this is a, if
6 you read in the various pleadings, this is a
7 contested point and a significant matter in
8 the proceeding, but this is, as Ms. Singh was
9 describing, the circumstances of negotiations
10 and bigger issues, I just wanted to add one or
11 two points at this juncture with your
12 permission.

13 JUDGE SIPPEL: Well, if it's not
14 too -- yes -- well, go ahead, begin, begin.
15 Begin to tell me what you want to tell me and
16 let's see how it goes. Go ahead, sir.

17 MR. GUSKEY: Just a minute. You
18 know, again, trying to avoid confusion
19 regarding discussions and negotiations in
20 settlement, the issue with Mr. Waugh that the
21 company, and is a private matter between a
22 consultant and the company regarding

1 compensation for services, it's a contentious
2 matter. It dates back over ten years and it's
3 been unresolved through that entire time.

4 However, as a result of the EB -
5 action in order to provide, you know, clarity
6 and transparency regarding the company's
7 position in the relationship with Mr. Waugh,
8 it was determined that it was best to resolve
9 that longstanding issue with Mr. Waugh. So
10 the company separately from any negotiations
11 with the FCC regarding settlement of the EB
12 action, endeavored to resolve the contract
13 with Mr. Waugh from March until the July
14 period that was described as reaching an
15 impact.

16 So just putting, as far as for
17 your judge's understanding, there were two,
18 two levels of negotiations going on. It was
19 never a mandate or requisite that Preferred
20 resolve matters with Mr. Waugh.

21 We just felt that it was, it would
22 be best, and would also lead to what would be

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1 a universal settlement as to something that
2 would be otherwise because Mr. Waugh indicated
3 that he was not to sign off on any settlement
4 agreement until his compensation issue was
5 resolved. And I will stop at that point and,
6 of course, going forward, I'm sure there will
7 much more to discuss.

8 JUDGE SIPPEL: Okay. All right.
9 Well, I hope not -- not today anyway. But as
10 I understand, what, what -- excuse me, Ms.
11 Singh, I'll come back to everybody on this,
12 but what the heck -- it didn't make any
13 difference to the Bureau about that, did it?

14 I mean, you didn't care anything
15 about this. If it's equitable interest -- I'm
16 sorry, it's a non-attributable interest
17 passive stockholder in compensation for
18 services rendered over a ten-year period.

19 MS. SINGH: Your Honor, there are a
20 few things --

21 JUDGE SIPPEL: Excuse me, just a
22 minute.

1 MS. SINGH: I'm sorry.

2 JUDGE SIPPEL: There's no
3 conversion rights on those, is there? That's
4 just -- it's straight out preferred stock or -
5 - I'm using that generically.

6 MR. SILVA: Well, it goes -- it's a
7 -- the stock goes to the trust, which is held
8 for the benefit of Mr. Waugh. He -- the
9 voting trust absolutely forbids him from
10 voting the stock or controlling the company.

11 JUDGE SIPPEL: Right, so he just,
12 he just collects the, the dividends or
13 whatever.

14 MR. SILVA: That was the intention,
15 yes.

16 JUDGE SIPPEL: Okay. Ma'am.

17 MS. SINGH: Your Honor, if I may?
18 There are a few points of clarification that
19 the Bureau wishes to offer at this time. The
20 first is that the Bureau's understanding from
21 documents that it has seen is that the voting
22 trust to which Mr. Waugh's counsel refers has

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1 a limited term at all times.

2 So the first voting trust that was
3 established, according to documents in the
4 Bureau's possession, had a term of five years.
5 There was also a restated and amended voting
6 trust document which specified a term of
7 another five years. And so these documents
8 did have a limited term in terms of their
9 written contemplation, your Honor.

10 The second point that the Bureau
11 would like to make is that this wasn't the
12 only sticking point. This is just the one
13 that has received the most attention.

14 Mr. Waugh in his July 8, 2009
15 letter on pages two to three, which are
16 attached to his settlement statement of facts,
17 did also describe his settlement position vis-
18 a-vis the Enforcement Bureau and other FCC
19 Bureaus. Now, as your Honor is well aware and
20 as the Bureau was under the understanding that
21 Mr. Waugh is aware, the Bureau is a party to
22 this proceeding.

1 It is not the enforcement arm of
2 the Commission and permitted to talk to the
3 Commission without the other parties present
4 as a result of the ex parte rules.
5 Nonetheless, Mr. Waugh included in his
6 settlement statement position several other
7 things that he wished for other Bureaus to do
8 that were totally outside the scope of the
9 incident proceeding.

10 One of these things was that he
11 wished for the Wireless Telecommunications
12 Bureau through the Office of General Counsel
13 to drop its objections to several appeals that
14 are currently pending in the D.C. Circuit
15 Court of Appeals as to WT Docket Number 02-55.
16 That proceeding in shorthand is something that
17 we refer to as the "Rebanding proceeding."

18 While I don't want to bore your
19 Honor with the details, it's a very complex
20 proceeding and in essence as to the licenses
21 that are designated for hearing in his case,
22 it decides where their spectrum will lie after

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1 that proceeding is done. So understandably,
2 they have some appeals, meaning they, the
3 licensees in this proceeding, plus other
4 parties that are not parties to this
5 proceeding, have pending appeals of the
6 Commission's orders in WT Docket Number 02-55
7 that have nothing to do with this case.

8 And Mr. Waugh sought as one of the
9 things that would convince him toward a
10 universal settlement that the Office of
11 General Counsel drop those objections and
12 allow Preferred to move forward with its
13 appeals basically unopposed.

14 Now the second thing that Mr.
15 Waugh sought, and again, this is only subject
16 to the Bureau's understanding that is outside
17 the Bureau's scope to grant as part of this
18 settlement or otherwise in any proceeding
19 where we cannot talk to the other Bureaus, Mr.
20 Waugh also sought for the Public Safety and
21 Homeland Security Bureau to adopt Preferred
22 Communication Systems, Inc. and Preferred

1 Acquisitions Inc.'s proposals for rebanding in
2 WT Docket Number 02-55, which is the subject
3 of those same appeals that I just described
4 for you.

5 JUDGE SIPPEL: So it would mean --
6 it would mean the companies, the Preferred
7 companies, would drop their rebanding
8 proposals?

9 MS. SINGH: Actually, it would mean
10 the opposite, your Honor. It would mean that
11 the Commission would drop its objections to
12 those appeals and give Preferred what it was
13 seeking in those underlying proceedings.

14 MR. SILVA: Your Honor, could I
15 just comment on that one?

16 JUDGE SIPPEL: Well, I think --
17 yes. Does that -- well, yes. Does that
18 pretty much wrap it up?

19 MS. SINGH: Actually, your Honor,
20 there's one more thing.

21 JUDGE SIPPEL: All right. Well, go
22 ahead. Can we finish -- can we get the full

1 package and then --

2 MR. SILVA: Sure, absolutely.

3 MS. SINGH: The other remaining
4 thing that Mr. Waugh sought according the
5 Bureau's understanding, and that's on pages
6 two to three of that July 8, 2009 letter, and,
7 again, this is another thing that is
8 completely outside of the Bureau's control and
9 unrelated to the incident proceeding, is that
10 your Honor might recall there is that request
11 for waiver of construction deadlines
12 applicable to PAI's licenses that I discussed
13 for you earlier this morning.

14 JUDGE SIPPEL: That's correct.

15 MS. SINGH: That remains pending in
16 the Wireless Telecommunications Bureau and
17 there are issues relating to it designated for
18 hearing. However, the order has maintained,
19 the order to show cause, in this proceeding
20 has maintained that jurisdiction over whether
21 that waiver request gets denied or granted or
22 dismissed resides with the Wireless

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1 Telecommunications Bureau.

2 Mr. Waugh sought as a part of his
3 settlement package as an inducement to get him
4 to come to the table to universally-settle
5 this case that the Wireless Telecommunications
6 Bureau grant that waiver request, which I
7 remind everybody in this proceeding, is still
8 currently the subject of allegations in this
9 case. It's a pending application, and unless
10 a settlement or some other means to dispose of
11 this case finally were approved and vetted
12 then there's no way that we could allow that
13 that application be granted because there are
14 pending issues related to it in this
15 proceeding.

16 So we can't -- we have no control
17 over whether the Wireless Bureau grants that
18 application or denies it or dismisses it. We
19 have no control over whether the Public Safety
20 and Homeland Security Bureau decides to adopt
21 Preferred's proceedings and proposals in a
22 totally different case, WT Docket Number 02-

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